

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

AARON FINLEY, #66987

PETITIONER

VERSUS

CIVIL ACTION NO. 4:07-cv-12-DPJ-JCS

CHRISTOPHER EPPS, Commissioner

RESPONDENT

**ORDER OF TRANSFER PURSUANT
TO 28 U.S.C. § 1631**

This matter comes before this Court, *sua sponte*, for consideration of transfer. The Petitioner, an inmate of the Mississippi Department of Corrections, currently incarcerated in the South Mississippi Correctional Institute, Leakesville, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254.¹

Petitioner states that he was convicted of capital murder in the Lauderdale County Circuit Court on December 6, 1996. The Petitioner was sentenced to serve a term of life imprisonment in the custody of the Mississippi Department of Corrections. The Petitioner has previously filed for habeas relief in this Court challenging the same conviction, in *Finley v. Epps, et al.*, civil action number 4:03cv3LN (S.D. Miss. June 6, 2005). On June 6, 2005, this Court entered a Final Judgment which dismissed the action, with prejudice.

A Petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate Court of Appeals for an order authorizing the District Court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). The Petitioner has failed to

¹As a preliminary matter the Court notes that Petitioner's motion to proceed *in forma pauperis* was denied. On February 21, 2007, the Petitioner filed a motion for an extension of time to pay the filing fee. On March 5, 2007, the Petitioner paid the filing fee.

submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit to proceed with his cause in this Court. Therefore, this Court has determined that in the interest of justice, this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997). Accordingly,

IT IS HEREBY, ORDERED AND ADJUDGED that pursuant to 28 U.S.C. § 1631, this petition for habeas corpus relief is transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED AND ADJUDGED that Petitioner's motion for an extension of time [5] is granted and the fee receipted on March 5, 2007, is considered timely filed.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of this Court is directed to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED AND ADJUDGED this the 8th day of March, 2007.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE